IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 825 OF 2005

1. Shri Madhu Krishna Dhuri
   (since deceased through L.R.s)

1A. Shri Bharat Krishna Dhuri & ors. ... Appellants

V/s

1. Shri Prabhakar Shankar Sabnis & ors. ... Respondents

Mr. Subhash Y. Dhadge for the appellants.

CORAM: P.V. KAKADE, J.

DATED: 29TH AUGUST, 2005

P.C.:

1. The appellants have preferred this appeal against the judgment and order passed by the Addl. District Judge, Sindhudurg at Oros, dated 2.3.2005 dismissing the appeal and confirming the judgment and order passed by the Civil Judge, J.D., Kudal, dated 30.4.2001 dismissing the plaintiffs' suit.

2. I have heard the learned counsel for the appellants. Perused the record.

3. The plaintiffs filed the suit for declaration and

perpetual injunction against the defendants. The suit was filed alleging that the plaintiffs were owner of the suit land and for perpetual injunction restraining the defendants from selling the suit land. The suit land admeasuring 54 Ares is located at village Pinguli, Tal. Kudal, Dist. Sindhudurga. Defendants 6 and 8 sold their shares to the plaintiffs, thus the plaintiffs were owner of the suit land and plaintiffs were in possession of the suit land, however, due to the fact that the revenue records show names of the defendants, they were threatened that the property would be sold and hence the suit was filed.

Defendants resisted the suit inter-alia submitting that plaintiffs were not the owners for suit property and alternatively defendant No.3 claimed that defendants were in possession of the suit land from 1959 and hence become owners by adverse possession.

4. The learned Trial Judge adjudicated the dispute on merits and came to the conclusion that the plaintiffs had not proved their exclusive ownership and title to the suit property and, therefore, plaintiffs were held not entitled for consequential relief of perpetual injunction. Alternative prayer of the plaintiffs that

they had become owners by adverse possession was also rejected and suit came to be dismissed.

The appeal was carried to the District Court. The learned Addl. District Court Judge, after hearing both sides on the basis of available evidence, dismissed the appeal. Hence the present appeal.

5. At the outset, it may be noted that there is absolutely no substantial question of law involved in this appeal and both the Courts below are seen to have appreciated the factual aspects of the evidence in proper perspective. It is quite evident from the record that there was previous litigation i.e. R.C.S. No. 192 of 1900 and in that suit it was decreed that both the parties were in common possession of the suit property. Since then, the status of the property is not proved to be changed. The lower appellate Court has rightly observed that when the plaintiffs were claiming ownership of the suit land, they were required to show that they are presently the owner of the suit property and it was not sufficient to show that they were co-owner of the suit land for the last 75 years. The plaintiffs have absolutely no explanation as to why their names were not mutated in the revenue records in

the year 1958-59. Plaintiff No.3 has admitted ownership of the defendants in the tenancy proceeding and in view of this aspect, the concurrent findings recorded by both the Courts below to the effect that plaintiffs have failed to prove exclusive ownership title appears to be legal and proper and would brook no interference.

In the result, the appeal stands dismissed with no order as to costs. Consequently, Civil Application No. 1373 of 2005 also stands dismissed with no order as to costs.

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